



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMra12121615

[REDACTED]
Complainant,

v.

GENUINE PARTS COMPANY d/b/a NAPA AUTO PARTS,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On December 4, 2012, [REDACTED] (“Complainant”) filed a Complaint with the Commission against Genuine Parts Company d/b/a NAPA Auto Parts (“Respondent”) alleging discrimination on the basis of race in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code §22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent terminated Complainant’s employment because of his race. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent’s legitimate business expectations; and (4) similarly-situated employees of another race were treated more favorably under similar circumstances.

It is evident that Complainant is a member of a protected class by virtue of his race, African-American, and that he suffered an adverse employment action when he was terminated on October 15, 2012. By way of background, Complainant was hired as a Delivery Driver on or about May 18, 2009. While he had received some disciplinary action in the past, witness testimony shows that Complainant was generally meeting Complainant’s legitimate business expectations until his termination. On or around October 12, 2012, Complainant’s cousin was



seen loading auto parts into the trunk of his car. Complainant alleges he adhered to Respondent's Purchase Plan Procedure for ordering parts as he had done in the past, handing the Assistant Store Manager (██████████ Caucasian) documentation to initiate the invoice procedure. Several witnesses corroborate that Complainant never removed the parts from the store; further, the witnesses assert they observed Assistant Manager fail to prepare and submit an invoice for the part. Moreover, evidence shows that Respondent's Human Resource Manager (██████████) admits that she and ██████████ viewed a surveillance video showing Complainant handing the Assistant Manager a piece of paper; however, they could not identify what was on the paper. Although ██████████ the manager asserted she would send a copy of the video, Respondent contends that it no longer has a copy of the video because the surveillance system automatically erases videos after sixty days. Despite the evidence supporting Complainant's rendition of events, Respondent terminated Complainant for theft. Moreover, Complainant alleges he was treated less favorably than his Caucasian co-workers. While Respondent has a random drug testing policy, Complainant asserts and a witness agrees that he was tested disproportionately to his Caucasian counterparts. Specifically, the witness (Caucasian) asserts he had been tested once within a 15 year period and he was aware of other Caucasian individuals who had been tested two or three times over the course of their employment. However, Complainant had been tested at least six or seven times over a nine year period. Witness testimony also supports Complainant's assertions that the store manager "singled him out" in a group, specifically requesting Complainant to perform additional duties, not assigned or requested of the Caucasian employees.

Thus, the evidence, taken as a whole, is sufficient to suggest that Respondent's proffered reason for the adverse employment action may be pretext for unlawful discrimination on the basis of race. The evidence suggests that Respondent failed to conduct a thorough investigation into whether Complainant provided his Assistant Manager with documentation to initiate the invoice or into whether the Assistant Manager failed to initiate the transaction. Moreover, the Assistant Manager admits and witness testimony supports that she had been disciplined in the past regarding missing parts, yet the record is devoid of any evidence that she received disciplinary action commensurate to the level of that levied against Complainant. This evidence, in conjunction with the disproportionate nature of the drug testing and treatment by members of management, suggests that an unlawful discriminatory practice may have occurred in this instance. Therefore, based upon the above-findings, probable cause exists to believe that there may have been a violation of the Civil Rights Laws as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 29, 2013
Date

Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission